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STAFF REPORT

DATE: January 23, 2018
TO: Mayor and City Councilors
FROM: Chuck Darnell, Associate Planner
SUBJECT: **Public Hearing on Ordinance No. 5043** - G 4-17 Zoning Text Amendments to amend Chapter 17.06 (Definitions), and Chapter 17.55 (Wireless Communications Facilities)

Council Goal:

Promote Sustainable Growth and Development

Report in Brief:

This action is a public hearing to consider Ordinance No. 5043, an ordinance amending Chapter 17.06 (Definitions), and Chapter 17.55 (Wireless Communications Facilities) of the McMinnville Zoning Ordinance to update provisions related to wireless telecommunications facilities with a purpose of achieving a more desirable community aesthetic while ensuring code compliance with current Federal Communications Commission (FCC) regulations.

Background:

McMinnville's first Wireless Communications Facilities ordinance (Ordinance 4732) was adopted in June, 2000 as Chapter 17.55 of the McMinnville Zoning Ordinance. This is the first proposed amendment to that Chapter in the 17 years since its original adoption.

Since that time there have been several federal laws governing local regulations of wireless communications facilities.

This zoning text amendment was identified as a priority project in the 2017 Planning Commission work plan.

The Planning Department presented the proposed amendments to the Wireless Communications Facilities chapter to the City Council at the November 28, 2017 meeting. On the day of that meeting, the Planning Department had been contacted by representatives of Verizon Wireless regarding concerns that they had with the proposed amendments. The Planning Department recommended that the City Council schedule a public hearing on Ordinance No. 5043 to allow for additional testimony from the representatives of Verizon Wireless to be considered. The City Council scheduled a public hearing for January 23, 2018, which was noticed in the local newspaper, the News Register, on Tuesday, January 16, 2018.

Discussion:

Since the November 28, 2017 City Council meeting, staff has met with representatives from Verizon Wireless and discussed their concerns. The primary concern from Verizon Wireless was that the proposed wireless communications facilities regulations would not allow for wireless providers to provide coverage throughout the city, particularly in residential areas where regulations would be more restrictive. Verizon also provided additional comments and concerns with the regulation of small cell technology and a proposed requirement to provide analysis of alternative technologies.

These concerns were highlighted in a letter provided to the City Council on November 28, 2017. After the City Council scheduled a public hearing on the proposed wireless communications facilities, Verizon Wireless provided staff with suggested revisions to the proposed ordinance language to better address their concerns. Staff has reviewed the suggested revisions in detail, and based on the suggestions from Verizon Wireless and consultation with legal counsel, staff is recommending some additional amendments to address the concerns raised by Verizon Wireless.

The additional amendments being proposed are listed in detail below. Text that is proposed to be added to the existing regulations is shown in **bold underlined** font while text that is removed is shown in ~~strikeout~~ font. New changes as a result of the consultation with Verizon Wireless since the City Council review on November 28, 2017 are shown in **bold underlined red text**.

Chapter 17.06 – Definitions

Alternative Antenna Support Structures – Roofs of buildings, provided they are 30 feet or more in height above the street grade upon which such buildings front, church steeples, existing and replacement utility poles, flagpoles, street light standards, traffic light and traffic sign structures, billboards and commercial signs, and other similar man-made structures and devices that extend vertically from the ground to a sufficient height or elevation to accommodate the attachment of antennas at an altitude or elevation that is commercially desirable for wireless communications signal transmission and reception. **Antennas cannot serve as an alternative antenna support structure.**

Reasoning for Amendment: The addition of this language will ensure that antennas are not continually added to other antennas to continue adding height onto the principle structure that is serving as the alternative antenna support structure.

Antenna Support Structure – A structure or device **driven into the ground or mounted upon or attached to a foundation** specifically designed, constructed and/or erected for the purpose of attaching, mounting or otherwise affixing antennas at a height, altitude, or elevation which is above the base of such structure. Antenna support structures include, but are not limited to, the following:

- A. Lattice tower: A vertical support structure consisting of a network of crossed metal braces, forming a tower which may be three, four, or more sided.
- B. Monopole tower; a vertical support structure consisting of a single vertical metal, concrete, or wooden pole, pipe, tube or cylindrical structure, typically round or square, ~~and driven into the ground or mounted upon or attached to a foundation.~~

Reasoning for Amendment: Consistency with required construction of lattice and monopole towers.

Distributed Antenna Systems (DAS) – A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a

geographic area or structure. For purposes of this code, Distributed Antenna Systems (DAS) are regulated as Small Cells.

Reasoning for Amendment: Consistency with typical definition of distributed antenna systems.

Small Cells – A small cell facility is a WCF that includes an antenna that is no more than three (3) cubic feet in volume and its associated equipment. Also referred to as Distributed Antenna Systems (or “DAS”). ~~A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. Small Cell Networks are also commonly referred to as DAS.~~

Reasoning for Amendment: Consistency with typical definition of distributed antenna systems.

Chapter 17.55 – Wireless Communications Facilities

17.55.010 Purpose. Wireless Communications Facilities (WCF) play an important role in meeting the communication needs of the citizens of McMinnville. The purpose of this chapter is to establish appropriate locations, site development standards, and permit requirements to allow for the provision of ~~WCF-wireless communications service~~ while helping McMinnville remain a livable and attractive city.

In accordance with the guidelines and intent of Federal law and the Telecommunications Act of 1996, these regulations are intended to: 1) protect and promote the public health, safety, and welfare of McMinnville citizens; 2) preserve neighborhood character and overall City-wide aesthetic quality; 3) encourage siting of WCF in locations and by means that minimize visible impact through careful site selection, design, configuration, screening, and camouflaging techniques.

As used in this chapter, reference to WCF is broadly construed to mean any facility, along with all of its ancillary equipment, used to transmit and/or receive electromagnetic waves, radio and/or television signals, including telecommunication lattice and monopole towers, and alternative ~~antenna supporting structures, equipment enclosures-cabinets or buildings,~~ parking and storage areas, an all other associated ~~facilities accessory development.~~

Reasoning for Amendment: Clarification of language and ensuring consistency of language with definitions of wireless communications facilities.

17.55.030 Exemptions. The provisions of this chapter do not apply to:
E. Modifications to Certain Existing Facilities that Qualify as “Eligible Facilities Requests” Under Federal Law. Any “Eligible Facilities Request” that does not “substantially change” the physical dimensions of a WCF, as those terms are used and defined under 47 U.S.C. 1455(a) and implemented by 47 CFR Section Part 1.40001. Applicants shall submit applications consistent with Section 17.72.020 demonstrating that the proposed modification qualifies as an “eligible facilities request” under applicable federal law, and compliance with all applicable building and structural codes. Filing fees shall be paid by applicants pursuant to Section 17.72.030. All such requests shall be reviewed by the City pursuant to 17.72.100

Reasoning for Amendment: Consistency with Title 47 of the Code of Federal Regulations (CFR).

17.55.040 Permitted and conditional use locations of antennas, small cells, DAS, antenna support structures and alternative antenna support structures to be used for wireless communications service. All non-exempt (17.55.030) WCF (antennas, antenna support structures, alternative antenna support structures, and small cells and DAS) (also known as DAS (Distributed Antenna Systems)) are permitted, conditionally permitted, or prohibited to be located in zones as provided in this Chapter and as listed below:

A. Permitted Uses.

1. **Antennas (inclusive of small cells), antenna support structures and alternative antenna support structures are permitted in the M-L (Limited Light Industrial Zone), M-1 (Light Industrial Zone), and M-2 (General Industrial Zone) zones. Antenna support structures are not permitted within the area identified in Chapter 17.59 (Downtown Design Standards and Guidelines).**
2. **Antennas (inclusive of small cells) mounted to alternative antenna support structures in the O-R, C-1, C-2, and C-3 zones located outside of the area identified in Chapter 17.59 (Downtown Design Standards and Guidelines). However, Unless a conditional use permit is obtained under 17.55.040 (B), such antennas and small cells shall add not more than ten (10) feet to the total height of such structure. Except for small cells installed in the public right-of-way, associated facilities so mounted shall be obscured from view from all streets and immediately adjacent properties by the use of screening materials designed, painted and maintained in a manner that will blend with the appearance of the building or structure. Such screening materials shall be reviewed and approved by the Planning Director. Small cells installed in the public right-of-way are subject to 17.55.050 (A)(1).**
3. **Antennas (inclusive of small cells) may be mounted to alternative antenna support structures in the R-1, R-2, R-3 and R-4 zones. However, Unless a conditional use permit is obtained under 17.55.040 (B), such antennas and small cells shall not exceed the height of the alternative antenna support structure. Except for small cells installed in the public right-of-way, associated facilities so mounted shall be obscured from view from all streets and immediately adjacent properties by the use of screening materials designed, painted and maintained in a manner that will blend with the appearance of the building or structure. Such screening materials shall be reviewed and approved by the Planning Director. Small cells installed in the public right-of-way are subject to 17.55.050 (A)(1).**

- B. Conditional Uses. In the A-H and F-P all zones other than industrial zones, antenna(s) may be mounted to existing alternative antenna support structures limited to an additional 20-feet in total height added subject to conditional use approval by the Planning Commission. Except for small cells installed in the public right-of-way, such antennas so mounted shall be obscured from view from all streets and immediately adjacent properties by the use of screening materials designed, painted and maintained in a manner that will blend with the appearance of the existing building or structure. Small cells installed in the public right-of-way are subject to 17.55.050 (A)(1). For properties located within the area identified in Chapter 17.59 (Downtown Design Standards and Guidelines), antennas proposed for mounting on alternative antenna support structures, in addition to all requirements of this Chapter, are subject to conditional use permit approval by the Planning Commission.**

- C. Prohibited Uses. Construction or placement of new antenna support structures in all zones except as permitted by 17.55.040 (A)(1) and in the matrix in 17.55.040 (D).**

D. Wireless Communications Facilities Matrix:

<u>WIRELESS FACILITIES</u>		
<u>ZONE</u>	<u>ANTENNA SUPPORT STRUCTURES</u>	<u>ANTENNAS (INCLUSIVE OF SMALL CELLS) MOUNTED TO ALTERNATIVE ANTENNA SUPPORT STRUCTURES*</u>
<u>Residential</u>	<u>Prohibited</u>	<u>Permitted - No additional height added</u>
		<u>Conditional Use – Less than or equal to 20 feet height added</u>
-	-	-
<u>Commercial</u>	<u>Prohibited</u>	<u>Permitted - Less than or equal to 10 feet height added</u>
		<u>Conditional Use - Within Downtown Design District</u>
		<u>Conditional Use – Less than or equal to 20 feet height added</u>
-	-	-
<u>Industrial</u>	<u>Permitted outside of the Downtown Design District</u>	<u>Permitted (100-foot maximum finished height)</u>
-	-	-
<u>Agricultural Holding</u>	<u>Prohibited</u>	<u>Conditional – Less than or equal to 20 feet height added</u>
-	-	-
<u>Floodplain</u>	<u>Prohibited</u>	<u>Conditional – Less than or equal to 20 feet height added</u>

Reasoning for Amendment: The additional amendments would allow for antennas to add height to alternative antenna support structures (roofs of buildings, flagpoles, utility poles, etc.). This was the primary concern provided by Verizon Wireless, which believed that the regulation that did not allow any additional height would limit wireless companies from providing adequate coverage in many areas of the city. Their concerns with providing adequate coverage were focused primarily in residential areas where no additional height would have been allowed. In order to function properly, antennas need to be at an elevation above the built environment. Also, many of the residential areas of the city are located in the west, while new antenna support structures (towers) are only allowed in industrial areas that are primarily in the eastern portion of the city.

The additional amendments proposed would allow for an additional height of up to 20 feet for antennas that are mounted to alternative antenna support structures in residential and commercial zones. These antennas that add height to alternative antenna support structures would be subject to the new stealth and design standards being recommended as part of the amendments to the wireless communications facilities chapter. However, antennas that add additional height would also be subject to a conditional use review process, which would allow for an additional level of review against the conditional use review criteria to ensure that the new antenna is compatible with the surrounding area, has a minimal impact, and will cause no adverse impacts on surrounding properties.

17.55.050 Development review standards.
All WCF shall comply with the following design and review standards, unless identified as

being legally non-conforming (grandfathered) as per the requirements of Chapter 17.63 (Nonconforming Uses).

A. Visual Impact.

1. **Antennas. Façade-mounted antennas (inclusive of small cells) shall be architecturally integrated into the building/structural improvement design and otherwise made as unobtrusive as possible. As appropriate, antennas shall be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Façade-mounted antennas shall not extend more than two (2) feet out from the building face. Roof-mounted antennas shall be constructed at the minimum height possible to serve the operator's service area and shall be set back as far from the building edge as possible or otherwise screened to minimize visibility from the public right-of-way and adjacent properties.**
 - a. **Small Cells on existing or replacement utility poles, street light standards, signal poles, etc. shall also conform to the following standards.**
 - 1) **The antennas and/or replacement utility pole do not project more than 24 inches above the existing utility pole support structure.**
 - a. **The Planning Director may allow for additional height, up to no more than ten (10) feet above the existing utility pole support structure, if the additional height is required to meet separation requirements from electrical lines. The applicant must also show that there are no alternative sites available that would not require more than an additional 24 inches of height through the alternative site analysis required in 17.55.070(G).**
 - 2) **No more than a total of two antennas or antenna arrays are located on a single pole.**
 - 3) **The Any ground-mounted equipment cabinet is no larger than six cubic feet and is concealed from public view by burying or screening by means other than walls or fences.**
 - 4) **Any pole-mounted equipment or equipment cabinet is painted or finished to match and mounted as close to the pole as is feasible, unless it is incorporated into some other stealth or architectural feature.**

Reasoning for Amendment: The additional amendments provide more clarification and requirements for small cells installed on utility poles in the public right-of-way. Also, a provision is recommended to be added to allow for the Planning Director to allow additional height from existing utility poles if necessary to meet required setbacks from existing electrical lines. This additional height was suggested by Verizon Wireless. While staff believes that this could be an issue and agrees with allowing additional height, staff is proposing to still require that the applicant provide an alternative site analysis to show that there is no alternative sites available that would not require any additional height.

17.55.050 Development review standards.

All WCF shall comply with the following design and review standards, unless identified as being legally non-conforming (grandfathered) as per the requirements of Chapter 17.63 (Nonconforming Uses). [...]

2. **Height. Freestanding antenna support structures and alternative antenna support structures shall be exempted from the height limitations of the zone in which they are located, but shall not exceed one-hundred (100) feet in Industrial zones unless it is demonstrated that it additional height is necessary. Antennas (inclusive of small cells) shall not exceed fifty (50) feet in height in residential zones, except where such facility is sited on an alternative antenna support structure. This exemption notwithstanding, the height and mass of the transmission tower antenna support structure shall be the**

minimum which is necessary for its intended use, as demonstrated in a report prepared by a ~~licensed professional RF~~ engineer. A ~~wireless or broadcast communication facility WCF~~ that is attached to an alternative antenna support structure shall not exceed the height indicated in the matrix in 17.55.040 (D). ~~of the alternative antenna support structure by more than ten (10) feet in commercial zones, and for location or collocation on alternative tower structures in residential zones, no increase in height shall be allowed.~~

Reasoning for Amendment: The additional amendments limit the overall height of antennas in residential zones to 50 feet in height. The maximum building height in most residential zones is 35 feet, so the limitation to 50 feet will ensure that antennas are not constructed that are substantially larger than the surrounding built environment. Other additional amendments provide for consistency with the wireless communications facilities definitions and the matrix of permitted wireless communications facilities.

17.55.050 Development review standards.

All WCF shall comply with the following design and review standards, unless identified as being legally non-conforming (grandfathered) as per the requirements of Chapter 17.63 (Nonconforming Uses). [...]

4. **Screening. ~~Except in the public right-of-way, t~~The area around the base of antenna support structures (including any equipment enclosure) is to be fenced, with a sight-obscuring fence a minimum of six feet in height. The fenced area is to be surrounded by evergreen shrubs (or a similar type of evergreen landscaping), placed within a landscaped strip a minimum of ten feet in width. In the event that placement of a proposed antenna support structure and/or equipment enclosure is located in a unique area within a subject site that would not benefit from the addition of landscaped screening, the Planning Director may require that the applicant submit a landscape plan illustrating the addition of a proportional landscape area that will enhance the subject site either at a building perimeter, parking lot, or street frontage, adjacent to or within the subject site.**

Reasoning for Amendment: The screening requirement for antenna support structures in the public right-of-way would not be required, as those facilities are already subject to undergrounding and design requirements in Section 17.55.050 (A)(8).

17.55.050 Development review standards.

All WCF shall comply with the following design and review standards, unless identified as being legally non-conforming (grandfathered) as per the requirements of Chapter 17.63 (Nonconforming Uses). [...]

5. **Color.**
 - a. **A camouflage or stealth design that blends with the surrounding area shall be utilized for all wireless and broadcast communication facilities unless an alternative design is approved during the land use review process. If an alternative design is approved, all towers, antennase and associated equipment shall be painted a non-reflective, neutral color as approved through the review process. Attached communication facilities shall be painted so as to be identical to or compatible with the existing structure.**
 - b. **~~Towers~~Antenna support structures more than 100 feet in height shall be painted in accordance with the Oregon Department of Aviation (ODA) and Federal Aviation Administration (FAA) rules.**
 - c. **Where ancillary facilities are allowed under this code to be visible, they shall be colored or surfaced so as to blend the facilities with the surrounding natural and built environment, and where mounted on the ground shall be otherwise screened from public view, or placed underground.**

Reasoning for Amendment: Consistency with wireless communications facilities definitions.

17.55.050 Development review standards.

All WCF shall comply with the following design and review standards, unless identified as being legally non-conforming (grandfathered) as per the requirements of Chapter 17.63 (Nonconforming Uses). [...]

6. **Signage. ~~Except when included as part of a camouflage or stealth design, t~~There shall be no signs, symbols, flags, banners, or other such elements attached to or painted or inscribed upon any WCF except for warning and safety signage with a surface area of no more than three (3) square feet. Except as required by law, all signs are prohibited on WCF except for one non-illuminated sign, not to exceed two (2) square feet, which shall be provided at the main entrance to the WCF, stating the owner's name, the wireless operator(s) if different from the owner, and address and a contact name and phone number for emergency purposes.**

Reasoning for Amendment: Allows for signs to be considered as part of a camouflage or stealth design.

17.55.050 Development review standards.

All WCF shall comply with the following design and review standards, unless identified as being legally non-conforming (grandfathered) as per the requirements of Chapter 17.63 (Nonconforming Uses). [...]

7. **Historic Buildings and Structures. If the application involves the placement of an antenna on a building that is listed in the ~~National Register of Historic Places or the McMinnville Historic Resources Inventory~~~~McMinnville register of historic structures~~, no such permit shall be issued without the prior approval of the McMinnville Historic Landmarks Committee.**

Reasoning for Amendment: Consistency with other language in the Zoning Ordinance.

17.55.050 Development review standards.

All WCF shall comply with the following design and review standards, unless identified as being legally non-conforming (grandfathered) as per the requirements of Chapter 17.63 (Nonconforming Uses). [...]

8. **Accessory Building Size. Within the public right-of-way, no above-ground accessory buildings shall be permitted. Outside of the public right-of-way, all accessory buildings and structures permitted to contain equipment accessory to a WCF shall not exceed twelve (12) feet in height unless a greater height is necessary and required by a condition of approval to maximize architectural integration. Each accessory building or structure is limited to two hundred (200) square feet, unless approved through a Conditional Use Permit. If approved in a Residential zone or the Downtown ~~Overlay Design~~ District, all equipment and ancillary facilities necessary for the operation of and constructed as part of a ~~WCF wireless or broadcast communication facility~~ shall be placed within an ~~existing structure, incorporated into the WCF's design, or placed within an~~ underground vault specific to the purpose. ~~If it is infeasible to locate the facilities within an existing structure or incorporate them into the WCF's design, and~~ it can be sufficiently demonstrated to the Planning Director that undergrounding a vault would be impractical and/or infeasible (due to high water table, shallow bedrock, etc.) the Planning Director may waive this requirement in place of stealthing and/or screening sufficient to buffer the ~~otherwise undergrounded~~ equipment. For facilities required to be approved as stealth facilities, no fencing around the wireless or broadcast communication facilities shall be allowed.**

Unenclosed storage of materials is prohibited. Other building facilities, including offices, vehicle storage areas or other similar uses not necessary for transmission or relay functions are prohibited unless a separate land use application for such is submitted and approved. Such other facilities shall not be allowed in Residential zones.

Reasoning for Amendment: Consistency with wireless communications facilities definitions, as well as adding the ability for WCF to be placed in existing structures or incorporated into the WCF's design, instead of only allowing for undergrounding of WCF.

17.55.050 Development review standards.

All WCF shall comply with the following design and review standards, unless identified as being legally non-conforming (grandfathered) as per the requirements of Chapter 17.63 (Nonconforming Uses). [...]

9. **Utility Vaults and Equipment Pedestals. Within the public right-of-way, utility vaults and equipment pedestals associated with WCF must be underground to the maximum extent possible, unless they are incorporated into the design of the WCF as otherwise allowed by this chapter.**

Reasoning for Amendment: Adding the ability for WCF to be incorporated into the WCF's design, instead of only allowing for undergrounding of WCF.

17.55.050 Development review standards.

All WCF shall comply with the following design and review standards, unless identified as being legally non-conforming (grandfathered) as per the requirements of Chapter 17.63 (Nonconforming Uses). [...]

B. Setbacks and Separation.

1. **Setbacks. Except when located in the public right-of-way, aAll WCF antenna support structures shall be set back from any other property line by a distance at least equal to the maximum height of the facility including any antennas or other appurtenances attached thereto, unless this requirement is specifically waived by the Planning Director or the Planning Commission for purposes of mitigating visual impacts or improving compatibility with other uses on the property.**
All WCF are prohibited in a required front yard, rear yard, side yard, or exterior side yard setback of any lot in any zone, and no portion of any antenna shall extend into such setback. For guyed towers or monopoles, all guy anchors shall be located outside of the required site setbacks.

Reasoning for Amendment: Removes setback requirement from WCF located in the public right-of-way, as they would have no property line to be setback from.

17.55.060 Co-location of antennas and antenna support structures.

- A. **For co-locations not exempt under 17.55.030 (E), in order to encourage shared use of towers, monopoles, or other facilities for the attachment of WCF, no conditional use permit shall be required for the co-location and addition of equipment, provided that:**
1. **There is no change to the type of tower or pole.**
 2. **All co-located WCF shall be designed in such a way as to be visually compatible with the structures on which they are placed.**
 3. **All co-located WCF must comply with the conditions and concealment elements of the original tower, pole, or other facility upon which it is co-locating.**
 4. **All accessory equipment shall be located within the existing enclosure, shall not**

result in any exterior changes to the enclosure and, in Residential zones and the Downtown ~~Overlay-Design~~ District, shall not include any additional above grade equipment structures.

5. Co-~~location~~ on an alternative ~~tower support~~ structure in a Residential zone or the Downtown ~~Overlay-Design~~ District shall require a stealth design.

Reasoning for Amendment: Consistency with wireless communications facilities definitions, Zoning Ordinance language, and wireless communications facilities exemptions.

17.55.070 Application for permit for antennas, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following:

- A. Payment of all permit fees, plans check fees and inspection fees;
 B. Proof of ownership of the land and/or alternative antenna support structure upon which the requested antenna, enclosure, and/or structure is proposed, or copy of an appropriate easement, lease, ~~or~~ rental agreement, or other owner authorization;

Reasoning for Amendment: Allows for more flexibility for applicants in providing other forms of owner authorization.

17.55.070 Application for permit for antennas, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following: [...]

- C. Public Meeting. ~~Except when the applicant proposes small cells in the public right-of-way, p~~Prior to submitting an application for a new antenna support structure (as defined in Chapter 17.06), the applicant shall schedule and conduct a ~~public neighborhood~~ meeting to inform the property owners and residents of the surrounding area of the proposal. ~~The neighborhood meeting shall be held in accordance with the requirements for neighborhood meetings in Section 17.72.095 (B) – (G) of the McMinnville Zoning Ordinance. In place of the notification distance described in 17.72.095 (D)(1), the notification distance to be used for new antenna support structures shall be 1,000 feet of the boundaries of the subject property. It is the responsibility of the applicant to schedule the meeting/presentation and provide adequate notification to the residents of the affected area (the affected area being all properties within 1000 feet of the proposed site). Such meeting shall be held no less than 15 days and no more than 45 days from the date that the applicant sends notice to the surrounding property owners. The following provisions shall be applicable to the applicant’s obligation to notify the residents of the area affected by the new development application:~~
1. ~~The applicant shall send mailed notice of the public meeting to all property owners within 1,000 feet of the boundaries of the subject property (the subject property includes the boundary of the entire property on which the lease area for the facility lies). The property owner list shall be compiled from the Yamhill County Tax Assessor’s property owner list from the most recent property tax assessment roll. The notice shall be sent a minimum of 15 days prior to the public meeting, and shall include at a minimum:~~
- a. ~~Date, time and location of the public meeting.~~
- b. ~~A brief written description of the proposal and proposed use, but with enough specificity so that the project is easily discernable.~~
- c. ~~The location of the subject property, including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessors map) which depicts the~~

- subject property.
- ~~2. Evidence showing that the above requirements have been satisfied shall be submitted with the land use application. This shall include: copies of all required notification materials; surrounding property owners list; and, an affidavit from the property owner stating that the above listed requirements were satisfied.~~

Reasoning for Amendment: Refers to recently adopted and now effective neighborhood meeting requirements in Section 17.72.095 (B) – (G) of the McMinnville Zoning Ordinance, rather than creating an additional process. However, the notification distance is specifically set at 1,000 feet, which was the recommended distance from the Planning Commission based on the potential size and impact of WCF.

17.55.070 Application for permit for antennas, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following: [...]

- D. **Residential Siting Analysis. If a wireless or broadcast communications facility WCF is proposed within a Residential zone, the applicant must demonstrate the need for the new facility and compliance with stealth design requirements for alternative support structure as specified in this Chapter.**

Reasoning for Amendment: Consistency with wireless communications facilities definitions.

17.55.070 Application for permit for antennas, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following: [...]

- E. **Geographical Survey. The applicant shall identify the geographic service area for the proposed WCF, including a map showing all of the applicant's existing sites in the local service network associated with the gap that the proposed WCF is proposed to close. The applicant shall describe how this service area fits into and is necessary for the service provider's service network. Prior to the issuance of any building permits, applicants for WCF shall provide a copy of the corresponding FCC authorization or license for the facility being built or relocated, if required. This Section is not applicable to applications submitted subject to the provisions of 47 U.S.C. 1455(a) as implemented by 47 CFR Part 1.40001(a) noted in Section 17.55.030(E) above**

Reasoning for Amendment: Relocation of this language from Section 17.55.070 (F), which was revised and updated as described below.

17.55.070 Application for permit for antennas, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following: [...]

- F. **Visual Impact Analysis. The applicant shall provide a visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening for all components of the facility. The visual impact analysis shall include photo simulations, the maximum silhouette of the facility, color and finish palette, proposed screening, and other information as necessary to determine visual impact of the facility as seen from multiple directions. The applicant shall include a vicinity map clearly depicting where, within a one-half (1/2) mile radius, any portion of the proposed WCF could be visible, and a graphic simulation showing The photo simulations must show the appearance of the**

proposed WCF and all accessory and ancillary structures from two separate points within the impacted vicinity, accompanied by an assessment of potential mitigation and screening measures. Such points are to be mutually agreed upon by the Planning Director, or the Planning Director's designee, and the applicant. The applicant shall include the locations of the two points on the vicinity map required above. a map showing where the photos were taken. This Section is not applicable to applications submitted subject to the provisions of 47 U.S.C. 1455(a) as implemented by 47 CFR Part 1.40001(a) noted in Section 17.55.030(E) above.

Reasoning for Amendment: Relocation of the visual impact analysis requirements from Section 17.55.070 (G) due to duplicative language in the alternative site analysis requirements. The proposed amendments now separate the photo simulations and visual impact analysis into a specific section referring to only this type of analysis.

17.55.070 Application for permit for antennas, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following: [...]

- G. ~~Visual Impact, Technological~~ Design Options, and Alternative Site Analysis. The applicant shall provide a visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening for all components of the facility. The analysis shall include photo simulations and other information as necessary to determine visual impact of the facility as seen from multiple directions. The applicant shall include a map showing where the photos were taken. The applicant shall include an analysis of alternative sites and ~~technological~~ design options for the WCF within and outside of the City that are capable of meeting the same service objectives as the preferred site with an equivalent or lesser visual impact. If a new tower or pole is proposed as a part of the proposed WCF, the applicant must demonstrate the need for a new tower or pole and why existing locations or design alternatives, such as the use of microcell technology, cannot be used to meet the identified service objectives. Documentation and depiction of all steps that will be taken to screen or camouflage the WCF to minimize the visual impact of the proposed facility must be submitted.**

Reasoning for Amendment: Relocation of the visual impact analysis requirements to Section 17.55.070 (F) as described above. Also, the requirement to provide an alternative analysis was modified to not specifically reference technology as a focus of the alternatives analysis. Verizon Wireless had provided a comment and concern that the previously recommended language violated the Federal Telecommunications Act of 1996 (FTA) by exhibiting a preference for alternative technologies.

Verizon's argument is, in essence, that requiring applicants to provide information regarding why other "technological design options" (including the specific reference to microcell technology) are not feasible amounts to "discrimination among providers of functionally equivalent services" in violation of the TCA. In support of that position, Verizon cites *New York SMSA Ltd. Partnership v. Town of Clarkstown*, 612 F.3d 97 (2d Cir. 2010). In that case, the Second Circuit Court of Appeals held that the Town of Clarkstown's adoption of a wireless facility review process that explicitly preferred "preferred alternate technology" including microcell technology. The review process was based on a point system, assigning less points to "macrocell" applications, which in turn subjected the non-microcell applications to a more onerous application process. In invalidating Clarkstown's permitting scheme, the Second Circuit found that the ordinance overreached into the regulation of "technical and operational aspects of wireless telecommunications technology." 612 F.3d at 105.

Legal counsel reviewed the argument, and found that McMinnville’s proposed language does not come anywhere near to what Clarkstown put into place. McMinnville’s provisions simply require an analysis of other potential sites and design options that might minimize the visual impact. The Federal District Court of Oregon has recognized the authority of local governments to regulate wireless facilities on the sole ground that the use is offensive to aesthetic sensibilities. *Voicestream PCS v. City of Hillsboro*, 301 F.Supp.2d 1251, 1257 (2004), quoting *Oregon v. Hartke*, 240 Or. 35, 46 (1965). Given that holding from our home District, local government bodies in Oregon have focused on the aesthetic component in the regulation and zoning of wireless facilities, and the above Code provisions do that.

Nevertheless, legal counsel and staff recommends the removal of the word “technological” from both the ordinance language. Doing so would eliminate any concern that the City is expressly favoring one kind of technology over another, but is rather emphasizing its interest in aesthetic considerations, and in minimizing overall visual impacts.

17.55.070 Application for permit for antennas, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following: [...]

- K. Height. The Application shall provide an engineer’s diagram, drawn to scale, showing the height of the WCF and all of its above-ground components. Applicants must provide sufficient evidence that establishes that the proposed WCF is designed to the minimum height required to meet the carrier’s coverage objectives. ~~If a WCF height will exceed the base height restrictions of the applicable zone, its installation will be predicated upon either an Administrative Variance approval by the Planning Director (17.72.110) or a Variance approval (17.72.120) by the Planning Commission.~~**

Reasoning for Amendment: Height is regulated differently by Section 17.55.040 (D) and Section 17.55.050 (A)(2), which allow for heights taller than what is normally allowed in the underlying zoning district.

17.55.070 Application for permit for antennas, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following: [...]

- Q. Lighting and Marking. The Application shall describe any proposed lighting and marking of the WCF, including any required by the Oregon Department of Aviation (ODA) or Federal Aviation Administration (FAA).**

Reasoning for Amendment: Including both the state and federal agencies that could require additional safety markings.

17.55.070 Application for permit for antennas, antenna support structures, and equipment enclosures. All applications for permits for the placement and construction of wireless facilities shall be accompanied by the following: [...]

- T. Co-Location Feasibility. A feasibility study for the co-location of any WCF as an alternative to new ~~antenna support~~ structures must be presented and certified by an Oregon-licensed Professional Engineer or RF engineer. Co-location will be required when determined to be feasible. The feasibility study shall include:**
- 1. An inventory, including the location, ownership, height, and design of existing WCF within one-half (1/2) mile of the proposed location of a new WCF. The planning director may share such information with other applicants seeking**

- permits for WCF, but shall not, by sharing such information, in any way represent or warrant that such sites are available or suitable.
2. Documentation of the efforts that have been made to co-locate on existing or previously approved towers, monopoles, or structures. The applicant shall make a good faith effort to contact the owner(s) of all existing or approved towers, monopoles, or structures and shall provide a list of all owners contacted in the area, including the date, form, and content of such contact.
 3. Documentation as to why co-location on existing or proposed towers, monopoles, or commercial structures within one thousand (1,000) feet of the proposed site is not practical or feasible. Co-location shall not be precluded simply because a reasonable fee for shared use is charged or because of reasonable costs necessary to adapt the existing and proposed uses to a shared tower. The Planning Director and/or ~~Development Review Board~~ Planning Commission may consider expert testimony to determine whether the fee and costs are reasonable when balanced against the market and the important aesthetic considerations of the community.

Reasoning for Amendment: Consistency with wireless communications facilities definitions and Zoning Ordinance language.

17.055.100 Abandoned Facilities [...]

- F. The applicant shall submit a ~~bond or~~ cash deposit to be held by the City as security for abatement of the facility as specified herein. The ~~bond or~~ cash deposit shall be equal to 120% of the estimated cost for removal of the facility and restoration of the site. Cost estimates for the removal shall be provided by the applicant based on an independent, qualified engineer's analysis and shall be verified by the City. Upon completion of the abandonment of the facility by the applicant as specified by this section, and inspection by the City, ~~any bond will be released and~~ the entirety of ~~the any~~ cash deposit shall be returned to the applicant.

Reasoning for Amendment: Allows for applicants to submit bond or cash deposits.

17.055.110 Review Process and Approval Criteria. The following procedures shall be applicable to all new ~~wireless and broadcast communication facility~~ WCF applications as specified in the Section:

- A. All new ~~wireless and/or broadcast communication facilities~~ WCF shall be reviewed under this chapter. Applications for new ~~wireless and broadcast communication facilities~~ WCF shall be processed in accordance with the provisions of this section.
- B. Approval Criteria. The City shall approve the application for a ~~wireless or broadcast communication facility~~ WCF on the basis that the proposal complies with the General Development Standards listed in this code above, and upon a determination that the following criteria are met:
 1. The location is the least visible of other possible locations and ~~technological~~ design options that achieve approximately the same signal coverage objectives.

Reasoning for Amendment: Consistency with wireless communications facilities definitions and removal of reference to requirement to provide analysis of alternative technology, as described in more detail above in the reasoning for the amendments to Section 17.55.070 (G).

Fiscal Impact:

There is no anticipated fiscal impact to the City of McMinnville with this decision.

Council Options:

1. **ADOPT** Ordinance No. 5043, approving G 4-17 and adopting the Decision, Findings of Fact and Conclusionary Findings.
2. **CONTINUE THE PUBLIC HEARING** date specific to a future City Council meeting.
3. **DO NOT ADOPT** Ordinance No. 5043.

Recommendation/Suggested Motion:

Staff recommends that the Council adopt Ordinance No. 5043 which would approve the zoning text amendments as recommended by the Planning Commission, with the additional amendments recommended by staff in response to testimony provided since the City Council meeting on November 28, 2017.

“THAT BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR APPROVAL, AND THE MATERIALS SUBMITTED BY THE CITY OF McMINNVILLE, I MOVE TO ADOPT ORDINANCE NO. 5043.”